THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 22063 of 2007

O r d e r:

The petitioner was appointed as Assistant Grade-III (Depot) in the respondent-Corporation on 16.01.1976. Thereafter, he was promoted to Assistant Grade-II (Depot) and Grade-I (Depot). While so, in the year 2002, during the physical verification of Wheat stocks kept at OSU-I and OSU-IIA of BSC Zangalapally, by the Regional Vigilance Squad, Food Corporation of India, Hyderabad, they found huge shortage in the said stocks, causing loss to the Corporation to a tune of Rs.76 lakhs approximately. Subsequently, based on the inspection report submitted by the Regional Vigilance Squad, the petitioner was placed under suspension on 04.07.2002 alleging that he being the in-charge of OSU-I and OSU-IIA is responsible for the abnormal storage loss of Wheat stock. The petitioner states that though the said suspension was revoked by the authorities themselves with effect from 14.05.2003, they subsequently referred the case to CBI, and the same is pending in the Court of the Special Judge for CBI Cases, at Hyderabad, vide Case No. RC 31(A)/2003. The grievance of the petitioner is that simultaneously a departmental inquiry was also initiated against him on the same set of charges by issuing a charge memo dated 12.09.2003, which is illegal and arbitrary. Hence, he filed the present writ petition.

The learned counsel for the petitioner submitted that in the year 1998, the Food Corporation of India procured huge stock of Wheat from Punjab and sent the same to Zanaganapalle for storage, without making adequate storage facilities, and out of compulsion, the stock was kept in the open yard and Katcha ground, and during the course of

time because of adverse weather conditions, there was some shortage in the stock stored therein, and as such, no deliberate negligence or act of misconduct can be attributed to the petitioner. He further submitted that based on the complaint given by the respondents, the CBI registered a criminal case, and filed charge sheet against the petitioner, which is pending in the Court of the Special Judge for CBI Cases, at Hyderabad, vide Case No. RC 31(A)/2003, and that since the CBI have already registered a case and filed charge sheet against the petitioner, and since the same is pending trial, it is not proper for the respondents to initiate disciplinary proceedings against him into the self-same charges, and more so when the witnesses to be examined in the criminal case and the departmental enquiry are one and the same. He submitted that if the departmental enquiry is allowed to go on, serious prejudice would be caused to the petitioner in the criminal case, and as such, prayed that till the conclusion of the criminal case, the departmental proceedings be stayed.

On the other hand, the learned Standing Counsel for the respondents-Corporation submitted that the charges framed against the petitioner in the departmental enquiry are entirely different and distinct from the charges framed against him in the criminal case, and as such, it is not proper to stay the departmental proceedings until the conclusion of the criminal case, and in support of his contention that pendency of criminal case is not a bar to go ahead with the departmental proceedings, he relied on a decision of the apex Court reported in **Suresh Pathrella v. Oriental Bank of Commerce**[1]. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Corporation.

It is the contention of the petitioner that inasmuch as a criminal

case is pending against him in respect of the very same charges on which the departmental enquiry is sought to be initiated, the departmental proceedings have to be stayed until conclusion of the criminal case, else it would cause prejudice to him in the criminal case for the witnesses in the departmental enquiry and the criminal proceedings are one and the same.

I am unable to agree with this submission of the petitioner. The law is well settled that approach and object of criminal proceedings and departmental proceedings are entirely different and distinct, in the former, the accused would be tried for offences under IPC or other penal offences, while in the latter, the employee would be tried for violation of the service conditions of employment. The apex Court in ***Lalit Popli v. Canara Bank and others***[2] held that the criminal proceedings and departmental proceedings are entirely different and the standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. The apex Court held as follows:

> "It is fairly well settled that the approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him, whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. (See **State of Rajasthan Vs. B.K. Meena**[3]) In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

Further, the apex Court in **Ajit Kumar Nag Vs. General**

Manager (PJ), Indian Oil Corpn. Ltd[4]**,** held that the two proceedings, criminal and departmental, are entirely different and they operate in different fields and have different objectives. The apex Court held as follows:

> "…….The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused "beyond reasonable doubt", he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability"……"

So from the above, it is clear that the criminal proceedings and departmental proceedings are different and distinct. Though the petitioner contends that the charges framed against him in the criminal case and the departmental proceedings are one and the same, the fact remains, in the criminal case, the petitioner has been charged for the offences punishable under Sections 120-B, 201, 409 and 477-A IPC and 13 (2) read with 13 (1)(c) of PC Act, 1988, while in the departmental proceedings, a reading of the impugned charge memo, would disclose that he has been charged for the contravention of Regulations 31 and 32 of the FCI (Staff) Regulations, 1971, in that he being the in-charge of OSU-I and OSU-IIA was responsible for

abnormal storage loss of Wheat stock. Thus, it is clear that the charges framed against the petitioner in the criminal case and the departmental proceedings are not one and the same, but distinct and different with each other. In that view of the matter, it is not a case, where the departmental proceedings should be stayed till the conclusion of the criminal case.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 2nd November, 2007.
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[1] (2006) 10 SCC 572
[2] 2003 (3) SCC 583
[3] (1996) 6 SCC 417 1996 SCC (L&S) 1455
[4] (2005) 7 SCC 764